Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -- Reform of the International Settlements Policy and Associated Filing Requirements	)	IB Docket No. 98-148
	)	
Regulation of International Accounting Rates	)	CC Docket No. 90-337

REPLY COMMENTS OF TELIA NORTH AMERICA, INC.

Telia North America, Inc. ("Telia NA") by its attorneys, hereby replies to the comments filed in response to the Commission's *Notice of Proposed Rulemaking* ("*Notice*") concerning the reform of the International Settlements Policy ("ISP").[1]

I. THE COMMENTS REFLECT STRONG SUPPORT FOR THE COMMISSION'S PROPOSALS TO ELIMINATE THE ISP

The overwhelming majority of the parties filing comments – including U.S. carriers, foreign carriers, and users – strongly supported the Commission's proposal to eliminate the ISP for settlement arrangements with non-dominant foreign carriers from WTO Member Countries.[2]

[1] *See 1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates*, FCC 98-190, IB Docket No. 98-148, CC Docket No. 90-337 (rel. Aug. 6, 1998) ("*Notice*").

[2] *See Comments of AT&T Corp.* at 4; *Comments of MCI WorldCom Inc.* at 2; *Comments of Sprint Corporation* at 3; *Comments of BellSouth Corporation* at 2; *Comments of SBC Communications, Inc.* at 7; *Comments of GTE* at 4; *Comments of Cable & Wireless USA, Inc.* at 7 ("*C&W Comments*"); *Comments of ntta.com, Inc.* at 5; *Comments of Deutsche Telekom* at 4; *Comments of BT North America, Inc.* at 2 ("*BTNA* Comments"); *Comments of the Telecommunications Resellers Association* at 2 ("*TRA Comments*"); *Comments of the Competitive*

As explained by AT&T, "foreign carriers that lack market power raise few concerns regarding potential whipsawing because U.S. carriers can respond to such conduct by corresponding with another operator."[3] "Under these circumstances," Sprint concluded, "the ISP is no longer needed to protect the interests of U.S. carriers and ratepayers."[4]

Many of the commenting parties also offered strong support for the Commission's proposal to eliminate the ISP for arrangements involving foreign carriers from WTO Member Countries to which international simple resale ("ISR") is authorized.[5] On routes to such countries, U.S. carriers have the ability to terminate traffic at below-benchmark settlement rates and to route traffic entirely outside the accounting rate system. Taken together, SBC observed that these conditions "significantly diminish the risk that whipsawing will occur."[6]

Other commenters – including AT&T, MCI WorldCom, Sprint, and Ameritech—took a somewhat different approach and proposed a more stringent threshold for lifting the ISP with respect to WTO markets. More specifically, these parties urged the Commission to eliminate the ISP only for markets that offer U.S. carriers equivalent resale opportunities and settlement rates at or near the so-called "best practices" rate.[7] Like the Commission, however, these commenters generally agree that foreign carriers from liberalized markets with low settlement rates do not present a risk to competition in the U.S. telecommunications market.

Telecommunications Association at 5 ("*CompTel Comments*"); *Comments of Qwest Communications Corp.* at 2; *Comments of the General Services Administration* at 5 ("*GSA Comments*").

[3] *AT&T Comments* at 4.

[4] *Sprint Comments* at 3.

[5] *See BellSouth Comments* at 2, 3; *SBC Comments* at 8; *GTE Comments* at 4; *C&W Comments* at 4; *ntta.com Comments* at 5; *Deutsche Telekom Comments* at 4; *BTNA Comments* at 7.

[6] *SBC Comments* at 8.

[7] *See AT&T Comments* at 9, 10; *MCI WorldCom Comments* at 6; *Sprint Comments* at 7; *Ameritech Comments* at 4.

Consistent with these comments and the proposals made in the *Notice*, the Commission should rely on market forces, rather than the ISP, to regulate settlement agreements with non-dominant foreign carriers and on routes to WTO markets that offer U.S. carriers low settlement rates. As recently explained in a presentation delivered in Washington, D.C. by Mr. Lars Berg, Telia AB's President and CEO, "regulatory push will be a less effective force than market pull" in achieving reform of the international accounting rate system.[8] Accordingly, the Commission should eliminate the ISP to the greatest extent feasible.

II. THE PARTIAL RETENTION OF THE ISP IS UNNECESSARY AND WOULD IMPEDE THE DEVELOPMENT OF COMPETITION

Of all the commenting parties, only two – the Telecommunications Resellers Association ("TRA") and the General Services Administration ("GSA") – would have the Commission single out settlement arrangements with dominant foreign carriers for the continued application of the ISP.[9] These parties claim that retention of the policy for such arrangements is necessary to protect U.S. carriers from whipsawing. Contrary to these parties' claims, however, the development of competition in the international telecommunications market has rendered the ISP obsolete and the continued application of this policy would retard, rather than promote, the development of competition.

A. Application of the ISP to Arrangements with Dominant Foreign Carriers Is Unnecessary

The ISP was developed "in response to the unique situation in the international telecommunications arena which places *single* governmental or quasi-governmental entities in

[8] Mr. Lars Berg, President and CEO, Telia AB, Sweden, "*A Swedish Recipe for Telecom Competition; Current Telecom Policy Issues in the Increasingly Competitive International Marketplace*", American Enterprise Institute for Public Policy Research (Sep. 24, 1998).

[9] *See Comments of the Telecommunications Resellers Association* ("*TRA Comments*") at 5; *Comments of the General Services Administration* ("*GSA*") at 5.

direct negotiation with multiple private American entities."[10] As Telia NA explained in its initial comments, this unique situation no longer exists. Due to the entry of *multiple* competitors in many foreign markets and the development of more efficient means of organizing the supply of international services, U.S. carriers now have the ability to bypass dominant foreign carriers.

Several other parties reached this same conclusion. GTE, for example, observed that "on most WTO routes U.S. carriers faced with an attempt at whipsawing can negotiate with a competing carrier in the destination market."[11] BTNA and Cable & Wireless further explained that, on routes where international simple resale ("ISR") is permitted, U.S. carriers can bypass incumbent facilities by terminating it directly with a local operator in the foreign country.[12] Finally, the Competitive Telecommunications Association noted that the development of third-country routing practices – such as refile, switched hubbing, and reorigination – provide further protection against whipsawing. Indeed, the Association questioned whether attempts to discriminate among U.S. carriers could ever succeed given the ability of U.S. carriers to "route their traffic via intermediate countries at competitive spot-market rates."[13] In light of these bypass alternatives, Telia NA agrees with Qwest that maintenance of the ISP is not necessary to prevent dominant foreign carriers from whipsawing U.S. carriers on routes to liberalized WTO markets.[14]

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[10] *Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes*, RM-4796, CC Docket No. 85-204, ¶ 2 (rel. July 3, 1985) (emphasis added).

[11] *GTE Comments* at 7.

[12] *See BTNA Comments* at 7; *C&W Comments* at 5.

[13] *CompTel Comments* at 7.

[14] *See Qwest Comments* at 4. Telia NA also notes that pursuant to commitments made in connection with the WTO Basic Telecommunications Agreement, many foreign countries have established regulatory authorities and adopted pro-competitive regulatory principles. The resulting increased regulatory oversight will provide a strong deterrent against anticompetitive conduct in the provision of termination services on the foreign end of international routes.

Nor is the ISP necessary to prevent other forms of anticompetitive conduct on routes where U.S. carriers have access to settlement rates that approach cost. Many of the Commission's recent policy decisions in the international context have been driven by two competitive concerns: the need to prevent one-way inbound bypass of the international settlements process from foreign markets and the need to prevent foreign carriers from executing a price squeeze strategy.[15] As recognized by WorldCom MCI, however, where settlement rates approach cost, "there is minimal incentive or opportunity for in-bound bypass."[16] Moreover, it would be difficult, if not impossible, for a foreign carrier in a market with low settlement rates to execute a price squeeze strategy in cooperation with its U.S. affiliate. Indeed, the difference between the foreign carrier's settlement rate and the price for IMTS services offered by the foreign carrier's U.S. affiliate simply would not be sufficient to subject competing U.S. carriers to anticompetitive pricing pressure.

B. Application of the ISP to Arrangements with Dominant Foreign Carriers Would Be Counterproductive

In addition to being unnecessary, retaining the ISP for arrangements with dominant foreign carriers would be counterproductive. As explained below, the selective regulation called for by TRA and GSA would merely serve to perpetuate the market distortions identified in the *Notice* and thus skew the development of competition in the market for terminating international calls in both the U.S. and foreign markets.

As recognized by the Commission, the ISP has raised a barrier to entry by small U.S. carriers.[17] Because start-up carriers like Telia NA do not have high volumes of outgoing traffic,

[15] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket Nos. 97-142, 95-22, at ¶ 78 (rel. Nov. 26, 1997); *International Settlement Rates*, FCC 97-280, IB Docket No. 96-261, at ¶¶ 192-93 (rel. Aug. 18, 1997).

[16] *MCI WorldCom Comments* at 6.

[17] *See Notice* ¶ 10.

they receive little, if any, proportionate return traffic and thus have higher cost structures than their larger competitors. The continued application of the ISP to arrangements with dominant foreign carriers would simply guarantee that the bulk of U.S.-inbound traffic would still be directed to the handful of carriers with the highest shares of the market for outgoing traffic. As a result, smaller U.S. carriers would continue to be precluded from competing to terminate the majority of settled traffic on most routes.

Singling out dominant foreign carriers for application of the ISP also would place new entrants in foreign markets at a competitive disadvantage. If proportionate return requirements are retained for arrangements with dominant foreign carriers, U.S. carriers would, in certain instances, have an artificial regulatory incentive to direct their outbound traffic to these foreign carriers in order to secure lucrative return traffic. The end result would be to make it more difficult for new entrants in foreign markets to attract U.S. traffic for termination.

The Commission's policies should encourage U.S. carriers to organize the supply and distribution of international telecommunications services based on market factors such as cost, quality, and efficiency, rather than on artificial regulatory incentives. Accordingly, the Commission should reject TRA and GSA's invitation to retain the ISP for arrangements with dominant foreign carriers and instead, completely sever the regulatory link between *all* inbound and outbound traffic.

III. THE COMMISSION SHOULD NOT SUBJECT ARRANGEMENTS INVOLVING DOMINANT FOREIGN CARRIERS TO SPECIAL DISCLOSURE REQUIREMENTS

Many of the commenting parties also joined Telia NA in supporting the Commission's proposal to eliminate *all* filing requirements for accounting rate information and operating agreements covering traffic no longer subject to the ISP.[18] A few parties, however, would have the Commission retain such requirements for agreements between U.S. and dominant foreign carriers as well as for agreements covering traffic that exceeds certain volume thresholds.[19] Such disclosure, however, would only serve to prolong the negative effects of the ISP and should be rejected by the Commission.

The publication of settlement rates offered by dominant foreign carriers would remove an important incentive for U.S. carriers to seek further reductions in termination rates in foreign markets. In the *Notice*, the Commission explained that "uncertainty regarding settlement rates paid by competing U.S. carriers encourages carriers to bargain for the lowest possible settlement rate."[20] As a number of commenters correctly observed, the exact opposite is also true: content in the knowledge that its competitors have similar termination costs on a given route, a U.S. carrier would have little incentive to push its foreign correspondent for lower settlement rates.[21]

To the contrary, a U.S. carrier would have an affirmative incentive *not* to do so. Many U.S. and foreign carriers have been reluctant to conclude alternative settlement arrangements because the Commission's *Flexibility* rules require such agreements to be disclosed publicly.[22] There is every reason to believe that similarly requiring the disclosure of innovative settlement agreements on ISP-deregulated routes would have the same deterrent effect. As explained by SBC, this is so because of "the likelihood that arrangements that are the product of aggressive

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[18] *See GTE Comments* at 10, 11; *SBC Comments* at 12; *C&W Comments* at 8; *BTNA Comments* at 8; *Qwest Comments* at 5; *CompTel Comments* at 8.

[19] *See Sprint Comments* at 2; *Ameritech Comments* at 5; *TRA Comments* at 4.

[20] *See Notice* ¶ 5.

[21] *See C&W Comments* at 9, 10; *GTE Comments* at 6, 11; *SBC Comments* at 9; *CompTelComments* at 8; *BTNA Comments* at 8.

[22] *See Notice* ¶ 33.

and innovative negotiations" would "quickly become standard fare on the route."[23] In this regard, Cable & Wireless similarly observed that "[m]any foreign carriers do not want to have their contracts made available for competitive and proprietary reasons, and many demonstrate a misconception, even in flexibility arrangements, that public disclosure results in uniform access to the terms and conditions of the contract."[24]

In short, requiring the disclosure of settlement arrangements covering traffic not subject to the ISP could preclude carriers from negotiating "pro-competitive" settlement arrangements that would "reduce rates for U.S. consumers."[25] Nonetheless, if the Commission does require some form of disclosure, it should not also provide for notice and comment before permitting innovative settlement agreements reached with dominant foreign carriers to go into effect.[26] Such a requirement would ultimately harm consumers by preventing U.S. carriers from responding promptly to competitive pressures and implementing settlement rate reductions that benefit consumers. Moreover, adopting a prior approval for settlement agreements reached with dominant foreign carriers would be directly at odds with the pro-competitive thrust of the *Notice*.

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[23] *SBC Comments* at 12.

[24] *See C&W Comments* at 8.

[25] *See BTNA Comments* at 9.

[26] *See Sprint Comments* at 4.

CONCLUSION

For the reasons set forth above and in its initial comments, Telia NA urges the Commission to eliminate the ISP to the greatest extent feasible. At a minimum, the Commission should eliminate the ISP for agreements with non-dominant foreign carriers and for arrangements with carriers from WTO markets that offer U.S. carriers low settlement rates. The Commission also should decline to retain the ISP for agreements with dominant foreign carriers or to subject such agreements to special disclosure requirements.

Respectfully submitted,

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